



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 1st day of April, 2009

Ultimate Fares, Inc. and Roni Herskovitz

**Violations of 14 CFR 399.80, 14 CFR 399.84,
and 49 U.S.C. § 41712**

Enforcement Proceeding

Served April 1, 2009

DOT-OST-2009-0002

**NOTICE OF ENFORCEMENT PROCEEDING AND
PROPOSED ASSESSMENT OF CIVIL PENALTIES**

The attached complaint of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) alleges that Ultimate Fares, Inc., (Ultimate Fares) and Roni Herskovitz, the President and Chief Executive Officer of Ultimate Fares, violated the requirements of 14 CFR 399.80 and 14 CFR 399.84, the Department's rules relating to fare advertising by air carriers and their agents, and 49 U.S.C. § 41712, a statutory provision that prohibits unfair and deceptive trade practices and unfair methods of competition. Section 399.80 prohibits advertising practices by ticket agents that misrepresent the price of the air service they offer for sale, while section 399.84 requires that all fare advertisements, by air carriers or travel agents, state the full fare to be paid by consumers. Ultimate Fares, an Internet seller of air transportation with a website at www.ultimatefares.com, and Roni Herskovitz violated these provisions on the company's website.

Sections 399.80 and 399.84 are designed to ensure that consumers receive accurate and complete fare information on which to base their air travel plans. Furthermore, the provisions help protect consumers against "bait and switch" or similar tactics that may lead consumers into examining what appears to be a lower air fare only to discover later additional charges that should have been disclosed initially. 14 CFR 399.80(f) states that it is "the policy of the [Department] to regard" certain practices by a ticket agent as unfair and deceptive practices or unfair methods of competition, including "misrepresentations as to fares and charges for air transportation or services in connection therewith." 14 CFR 399.84 requires, in essence, that "any advertising or solicitation by a direct air carrier, indirect air carrier, or an agent of either, for passenger air transportation," if it states a price

for such air transportation, state the full price to be paid by the consumer. Under section 399.84, the Department considers any failure to state the full price to be an unfair and deceptive practice. As a matter of policy, we have not pursued enforcement action against air carriers and agents that have stated, separately from the advertised price, non-*ad valorem* taxes and fees imposed by the government on a per-passenger basis, such as passenger facility charges, so long as their nature and amounts are stated conspicuously in the advertisement.

In Internet advertising displays, our policy has been to eschew enforcement action if the full fare is stated conspicuously in the first screen display that provides fare quotes in response to a consumer inquiry, or if the existence of permissible additional charges is prominently disclosed and a clearly-presented hyperlink exists to take the consumer to a page showing the amounts of those charges.¹

In violation of sections 399.80 and 399.84, Ultimate Fares excludes the *ad valorem* federal excise tax from the domestic fare quotes on its website. Any *ad valorem* tax, as a matter of explicit and long-standing Department policy, must be included in all fare solicitations. Second, those additional taxes and fees that may be stated separately from the base fare, in accordance with our policy outlined above, are not stated on the first screen in which a fare quote is offered to the consumer. The current site merely states a fare and then states "+ taxes and fees." The applicable taxes and fees must either be stated in text on the same screen adjacent to the base fare or must be accessible via a hyperlink from the "taxes and fees" language. As currently published, Ultimate Fares' website does not disclose the amount of these taxes and fees until the consumer reaches the booking stage, and, even at that point, the website fails to break out the various additional charges. Internet fare displays such as these are deceptive and misleading to consumers and clearly violate the rules noted above.

In its April 29, 2008, investigation letter to Ultimate Fares, the Enforcement Office requested that Ultimate Fares immediately bring its website into compliance with the Department's regulations. Through counsel, Ultimate Fares requested an extension of time to provide a substantive reply, which was granted. After another extension and a change of counsel, the Enforcement Office sent the company a follow-up letter urging it to respond to the Enforcement Office's inquiry. Ultimate Fares responded to the Enforcement Office on July 30, 2008. Ultimate Fares' response, however, required further clarification. Furthermore, Ultimate Fares' website had not been modified to comply with the Department's rules. After attempting to resolve the issue over the next two months, including multiple attempts to obtain the appropriate website modifications, Ultimate Fares became unresponsive and the Enforcement Office was advised that its counsel was also no longer able to make contact with the company.

Based on the informal investigation undertaken by the Enforcement Office of Ultimate Fares' Internet display practices, as well as Ultimate Fares' failure to comply with the

¹ See, e.g., Order 2002-3-28, March 29, 2002; and Notice Regarding Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet, January 18, 2001 at <http://airconsumer.ost.dot.gov/rules.htm>.

Department's investigative efforts, there are reasonable grounds to believe that Ultimate Fares, under the direction and control of Roni Herskovitz, has violated provisions of 14 CFR Part 399 and 49 U.S.C. § 41712 and that an investigation of the alleged violations is in the public interest. Accordingly, pursuant to Rule 407 of the Department's Rules of Practice, 14 CFR 302.407, I hereby institute a formal enforcement proceeding to investigate the allegations set forth in the attached complaint.

Violations of 14 CFR 399.80, 14 CFR 399.84, and 49 U.S.C. § 41712 subject Ultimate Fares and its principals to the assessment of civil penalties under 49 U.S.C. § 46301 and 14 CFR Part 383 of up to \$27,500 for each violation. Each day each such violation continues is a separate violation.

The Assistant General Counsel for Aviation Enforcement and Proceedings seeks an assessment of civil penalties in the enforcement proceeding instituted by this notice. Under 14 CFR 302.407(d) of the Department's Rules of Practice, Ultimate Fares and Roni Herskovitz are notified that they may be liable for civil penalties of \$1,000,000, reflecting violations of 14 CFR 399.80, 14 CFR 399.84 and 49 U.S.C. § 41712. We are also notifying Ultimate Fares and Roni Herskovitz that they may be liable for an additional penalty of \$27,500 for each additional violation of these statutory and regulatory provisions substantiated in the course of this proceeding and for each day any violation continues.

This notice and the attached complaint will be served on Ultimate Fares and Roni Herskovitz. Under Rule 408 of the Department's Rules of Practice, 14 CFR 302.408, Ultimate Fares and Roni Herskovitz are required to file, within 15 days, an answer to the complaint admitting or denying specifically and in detail each allegation of the complaint, and a response to the proposed assessment of civil penalties, specifically presenting any matters they intend to rely on in opposition to or in mitigation of such civil penalties.

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

(SEAL)

CERTIFICATE OF SERVICE

I certify that on April 1, 2009, I served the foregoing Notice of Enforcement Proceeding and Proposed Assessment of Civil Penalties and the related Complaint on the Respondent by first class mail addressed to the Respondents' address in Las Vegas, Nevada.

Rosalind A. Knapp
Deputy General Counsel

By:

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Supervisory Attorney

And

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Trial Attorney
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**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D. C.**

Ultimate Fares, Inc. and Roni Herskovitz

**Violations of 14 CFR 399.80(f), 14 CFR 399.84
and U.S.C. § 41712**

Enforcement Proceeding

Served April 1, 2009

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ENFORCEMENT COMPLAINT

1. Ultimate Fares, Inc., (Ultimate Fares), an Internet travel vendor, is a Nevada Corporation with its principal place of business at 1785 East Sahara Avenue, Suite 490-296, Las Vegas, Nevada 89104.
2. Upon information and belief, Ultimate Fares operates under the direction and control of Roni Herskovitz, the President and Chief Executive Officer of Ultimate Fares.
3. Ultimate Fares maintains a website, <http://www.ultimatefares.com>, through which it advertises and sells air transportation, cruises and hotel accommodations.
4. Ultimate Fares is a ticket agent as defined by 49 U.S.C. § 40102(a)(4).¹ As a ticket agent, Ultimate Fares is subject to the provisions of 14 CFR 399.80 and 14 CFR 399.84, two Department rules regarding fare advertising, as well as 49 U.S.C. § 41712, a statutory provision that prohibits unfair and deceptive trade practices and unfair methods of competition.
5. 14 CFR 399.80 states, in pertinent part, that it is “the policy of the [Department] to regard” certain practices by a ticket agent as unfair and deceptive practices or unfair methods of competition, including “[m]isrepresentations as to fares and

¹ 49 U.S.C. § 40102(a)(4) defines a ticket agent as “a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation.”

charges for air transportation or services in connection therewith.”
14 CFR 399.80(f).

6. 14 CFR 399.84 states, in pertinent part, that “any advertising or solicitation by a direct air carrier, indirect air carrier, or an agent of either, for passenger air transportation, [or] a tour . . . that states a price . . .” that does not state the entire price to be paid by the consumer is an unfair and deceptive trade practice.
7. 49 U.S.C. § 41712 confers on the Department authority to prohibit unfair and deceptive trade practices and unfair methods of competition by ticket agents and is the statutory basis of 14 CFR 399.80 and 14 CFR 399.84.
8. Pursuant to its longstanding enforcement case precedent, the Department permits taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges and departure taxes, to be stated separately in fare advertisements only so long as the charges are levied by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid.
9. With respect to Internet fare listings, the Department has permitted taxes and fees that may properly be stated separately from the base fare, and their amounts, to be stated through a prominent hyperlink placed proximate to the fare.
10. Since at least March 19, 2008, Ultimate Fares has advertised fares on its website that fail, in their initial presentation, to include applicable Federal excise taxes that are *ad valorem* in nature.
11. Since at least March 19, 2008, Ultimate Fares has failed to disclose on its website the nature and amount of taxes and fees to be charged to consumers in connection with airfares when such airfares are initially advertised. On its website, Ultimate Fares fails to provide specific notice of taxes and fees that must be paid in connection with its advertised fares until a consumer makes a selection from a list of alternative fares, thereby choosing the itinerary, flight number and travel dates.
12. The Office of Aviation Enforcement and Proceedings first contacted Ultimate Fares about its deceptive airfare advertisements by letter dated April 29, 2008. Nevertheless, as of the date of this complaint, Ultimate Fares still engages in the conduct described in Paragraphs 10 and 11 above.
13. By engaging in the conduct described in Paragraphs 10 and 11 above, Ultimate Fares violated 14 CFR 399.80, 14 CFR 399.84 and 49 U.S.C. § 41712 continuously since at least March 19, 2008, and these violations continue at the time of the filing of this complaint.

14. Violations of 14 CFR 399.80, 14 CFR 399.84, and 49 U.S.C. § 41712 subject Ultimate Fares and its principals to the assessment of civil penalties under 49 U.S.C. § 46301 and 14 CFR Part 383 of up to \$27,500 for each violation. Each day each such violation continues is a separate violation.
15. Under 49 U.S.C. § 41712, the Department may, upon finding that a carrier or ticket agent is engaged in an unfair or deceptive trade practice or unfair method of competition, issue an order directing the violator to cease and desist from such conduct.
16. Under 49 U.S.C. § 46101(a)(4), the Department may issue an order compelling compliance with provisions of Title 49 U.S.C. §§ 40101 through 46507 and requirements prescribed under those sections, including 14 CFR Part 399 and 49 U.S.C. § 41712.

WHEREFORE, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings requests the Department of Transportation to:

- A. Find that Ultimate Fares, as a ticket agent, and Roni Herskovitz have misrepresented airfares on the company's website in violation of 14 CFR 399.80 and 14 CFR 399.84 by failing to state the full price of the fares advertised;
- B. Find that Ultimate Fares and Roni Herskovitz have engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712 by engaging in the conduct described in paragraph A;
- C. Find that Ultimate Fares and Roni Herskovitz have engaged in the unlawful conduct described in paragraphs A and B with respect to its Internet displays continuously since at least March 19, 2008, a period of more than 265 days;
- D. Order Ultimate Fares, Roni Herskovitz, and the company's principals, successors and assigns, to cease and desist from violating 14 CFR 399.80, 14 CFR 399.84, and 49 U.S.C. § 41712 by engaging in the conduct described in paragraphs A, B, and C;
- E. Assess civil penalties against Ultimate Fares and Roni Herskovitz, jointly and severally, of \$1,000,000 for the violations described in paragraphs A, B and C; and \$27,500 for each additional similar violation revealed in the course of this investigation and for each day a violation continues pursuant to 42 U.S.C. 46301; and
- G. Grant such other relief as may be appropriate.

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And

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